

Application No.: 10/621,749
Amendment dated May 2, 2006
Reply to Office Action of February 3, 2006

Remarks

No amendments were made to the claims.

Claims 65-80 remain pending in this application.

1. Response to Obviousness Rejection based upon Ludlow and Kvalvik

On page 2 of the Action, the Patent Office rejected claims 65, 67, 68, 70, 71, and 74-80 under 35 U.S.C. 103(a) as obvious in view of the combined teachings of U.S. Patent 5,754,989 of Ludlow [herein "Ludlow"] and U.S. Patent 5,715,546 of Kvalvik [herein "Kvalvik"]. The Applicant submits that these rejections are inappropriate and requests that they be reconsidered and withdrawn.

The Applicant typically refers to the MPEP for guidance in determining whether an obviousness rejection is appropriate. Specifically, section 2143 of the MPEP states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). [Emphasis added.]

The Applicant submits that the present invention is not taught or suggested by what is disclosed in Ludlow and Kvalvik, nor are all the claimed features taught or suggested.

With respect to claim 65, the Patent Office relies on Ludlow to teach that a headrest (175 in Figure 5) can be mounted on the upper rim of a spa. However, since Ludlow is silent with respect to the claimed electronic speaker, the Patent Office relies on the teachings of Kvalvik, which discloses audio equipment A mounted beneath a

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headrest 30. However, this combination by the Patent Office fails to recognize the other limitations in the claim that clearly distinguish from what Ludlow and Kvalvik disclose and the Patent Office fails to recognize the limitations of Ludlow and Kvalvik that are overcome by the present invention.

As recited claim 65, the claimed sound system includes a head rest mounted "so as not to substantially alter the substantially uniform elevation" of the housing of the spa. As discussed in the present specification, undesirable modifications to the housing by the headrest can not only provide an unpleasing visual obstruction, but can interfere with or negatively impact the packing and shipping requirements for spa housings - housings which are typically packed and shipped in a nested fashion. Though the spa of Ludlow may exhibit a desirable, relatively uniform housing rim elevation, even if one could introduce the electronic component of Kvalvik to the head rest of Ludlow (for example, by some undisclosed or unsuggested modification to the housing of Ludlow), the relatively uniform elevation of the Ludlow spa would have to be sacrificed. That is, typical of other prior art spas, the spa of Ludlow cannot accommodate a headrest without interfering with the shape of the spa housing. Thus, the combination of Ludlow and Kvalvik does not provide the advantages of the claimed invention the desirable having uniform elevation. For this reason alone, the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik.

Furthermore, there is no motivation or suggestion in Ludlow or Kvalvik to provide an electronic speaker "located below the upper rim of the housing" as claimed. Referring again to the electronic component A of Kvalvik, component A is not located below the upper rim of the housing as claimed, but mounted on top of the housing. Again, this aspect of the invention has the advantage of not permitting the electronic speaker to extend above the housing rim whereby it would require modifications to the housing which would negatively impact the aesthetic qualities and the packing and shipping requirements of the spa housing. For this reason also, the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik.

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Further still, the invention recited in claim 65 is also not obvious in view of Ludlow and Kvalvik due to the incompatibility of Kvalvik with Ludlow, and the undesirable effect upon Ludlow of introducing the teachings of Kvalvik. This requires a close examination of Ludlow. As described by its title and abstract, Ludlow discloses a "plumbing" or "water distribution system" for a spa. As shown most clearly in Figures 4 and 5 of Ludlow, the system disclosed by Ludlow includes a plurality of "manifolds" 139 mounted behind each seat of the spa. As shown in Figure 3, these manifolds 139 are mounted behind every seat or "pod" 137 that appears in the Ludlow spa. As shown in Figures 4 and 5 and described at 5:10-55, these manifolds 139 supply water to the water jets 115 in each pod 137. As shown most clearly in Figure 5 of Ludlow, the manifolds 139 are mounted directly beneath headrests 175. The Applicant submits that, not only is there no suggestion or teaching in Ludlow to provide a speaker in the headrest 175, but the placement of such a speaker would interfere with the manifolds 139 that characterize the invention disclosed by Ludlow. There is simply no room for a speaker beneath the headrests of Ludlow and, should a speaker be introduced, some form of undisclosed and unsuggested modification to the housing or headrest of Ludlow must be provided. Failing to provide such motivation, teaching, or even physical space for such a modification, the Applicant respectfully submits that the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik. The Applicant requests that this rejection be reconsidered and withdrawn.

In addition, the specification of Ludlow provides further evidence that the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik. In column 4, lines 22-43, Ludlow explains how the placement of supply lines 129 in channels 131 (See figure 3) which supply manifolds 139 are preferably positioned above the "water line" 195 whereby any water in channel 131 "flows into the containment 105" (4:32). That is, Ludlow teaches that the elevation of supply lines 129 in channels 131 and thus the elevation of manifolds 139 behind headrests 175 is preferred to ensure the desired

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draining. This characteristic of the Ludlow system is summarized in lines 64-66 of column 4, where Ludlow summarizes one advantage of his invention as:

2) having the supply lines in covered channels, hollows, or chambers that are disposed such that water will drain or flow into the containment. [Emphasis added.]

That is, Ludlow states that the placement of manifolds higher in the tub housing, and inherently behind the headrest is one advantage of the Ludlow invention. The Applicant submits that locating the electronic equipment of Kvalvik at the same location as suggested by the Patent Office would interfere with this desired feature of Ludlow. Again, the Applicant submits that this provides further evidence that the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik.

With respect to the rejections of dependent claims 67, 68, 70, 71, and 74-80, the Applicant submits that these claims are not obvious in view of Ludlow and Kvalvik for the same reasons that claim 65, from which they depend, is not obvious. The Applicant respectfully requests that these rejections also be reconsidered and withdrawn.

2. *Response to Obviousness Rejection based upon Ludlow, Kvalvik, and Diamond*

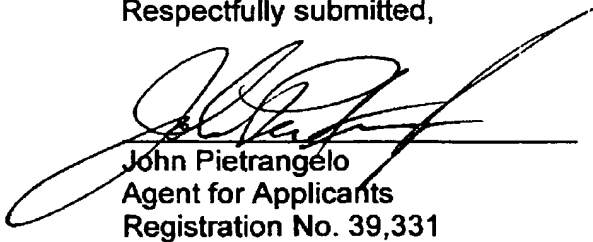
On the bottom of page 2 of the Action, the Patent Office rejected claims 66, 69, and 72 under 35 U.S.C. 103(a) as obvious in view of the combined teachings of Ludlow, Kvalvik, and further in view of U.S. Patent 4,575,882 of Diamond [herein "Diamond"]. The Applicant submits that these rejections are inappropriate and requests that they be reconsidered and withdrawn. Diamond does not provide the teachings or suggestions missing from Ludlow and Kvalvik; therefore, these claims are not obvious for the same reasons that the claims from which they dependent are not obvious. The Applicant respectfully requests that these rejections also be reconsidered and withdrawn.

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Conclusion

The Applicant believes that the application is in condition for allowance. A favorable action on the merits of the application is requested. If a telephone conference would be of assistance in advancing prosecution of this application, the Applicant's undersigned Agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,



John Pietrangelo
Agent for Applicants
Registration No. 39,331

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HESLIN ROTHENBERG FARLEY & MESITI P.C.
5 Columbia Circle
Albany, New York 12203-5160
Telephone: (518) 452-5600
Facsimile: (518) 452-5579